

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 8895 of 1995

For Approval and Signature:

Hon'ble MR.JUSTICE J.N.BHATT

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1. Whether Reporters of Local Papers may be allowed to see the judgements?
2. To be referred to the Reporter or not?
3. Whether Their Lordships wish to see the fair copy of the judgement?
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?
5. Whether it is to be circulated to the Civil Judge?

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MD GOHIL

Versus

STATE OF GUJARAT

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Appearance:

MR SURESH M SHAH for Petitioner

MR A.G. URAIZEE AGP for respondent

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CORAM : MR.JUSTICE J.N.BHATT

Date of decision: 27/02/96

ORAL JUDGEMENT

Rule. Service of Rule is waived by Mr. A.G. Uraizee, learned AGP for respondent State.

Upon very short but interesting question which has come in the surface of the petition under Articles 226 and 227 of the Constitution of India is as to whether there is violation of principle of natural justice in a situation like one on hand, where hearing is done by one officer and the decision is rendered by another officer thereto.

In order to appreciate the merits of the aforesaid aspect, it would be necessary to set out a few relevant necessary facts giving rise to this petition. The husband of the petitioner during his life time had submitted an application for exemption under section 20 of the Urban Land (Ceiling and Regulation) Act, 1954 (for short 'Act') to the respondent authority on 11-8-1976. Other documents were also filed in support of the said application. During pendency of the proceedings, the husband of the petitioner died on 29/1/1986. The respondent State rejected the said application on 27/3/1990 which culminated into the filing of Special Civil Application No. 5632 of 1990 by the petitioner in this court which came to be disposed of with the direction to the respondent State to hear the petitioner personally and thereafter to decide the application for exemption in accordance with law. The direction was given by this court on the aforesaid writ petition on 11/10/1990.

Thereafter the petitioner was heard by the Deputy Secretary one Mr. H.V.Patel but he could not decide and pass the order on the exemption application. The said application subsequently came to be rejected on 15/9/1995 by another Deputy Secretary, one Shri V.D.Kotak, without hearing the petitioner.

There is no dispute about the fact that in the earlier writ petition filed by the petitioner, this court was pleased to direct on 11/10/1990 the respondent State to decide the application of the petitioner on merits within three months after affording an opportunity of hearing to the petitioner. There is also no dispute about the fact that the hearing was given by one Deputy Secretary Mr. H.V. Patel who could not decide the matter. Likewise, there is also no dispute about the fact that the matter came to be decided ultimately by one Deputy Secretary, Mr. V.D.Kotak who had not heard the petitioner. Apart from the breach of the principles of natural justice, there is also violation of the clear and specific direction issued by this court in the earlier petition. Undoubtedly, the hearing is necessary or not would depend on variety of factors as held by this court in many cases. However one thing is certain when the application for exemption was heard by one officer and it was not decided by the same officer and on the contrary, it was decided in absence of the petitioner by another officer, who had not heard the petitioner, is nothing but a clear violation of the principles of natural justice. More over in the present case, there was an unambiguous

and clear direction in the earlier writ petition that the exemption application may be decided by the authority concerned after affording an opportunity of hearing to the petitioner which is also not done. So on both counts, the impugned order recorded by the respondent authority is suffering from vice and is bad and illegal, and therefore, it is required to be quashed and the matter is required to remit back to the respondent authority for a decision afresh in accordance with law.

The view which this court is inclined to take, is supported by the Division Bench decision of this court rendered in the case of SHREE RAM PACKAGING & ANOTHER Vs. UNION OF INDIA & ANOTHER reported in 1990(2) G.L.H. 343.

Having regard to the facts and circumstances of the case, the impugned order is quashed and set aside and it is hereby directed that the respondent authority to dispose of the application for exemption under section 20 of the Act in accordance with law within a period of two months from the date of receipt of writ from this court, after following the directions of this court passed in the earlier petition. Matter is, therefore, remanded to the respondent authority. Rule is made absolute to the aforesaid extent, with no order as to costs in the facts and circumstances of the case.